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JUN 10 1999

Department of Water Resources

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June 9, 1999

Norman C. Young, Administrator
Water Management Division
Department of Water Resources
P. O. Box 83720
Boise, ID 83720

RE: May 26, 1999 Order Requiring Measuring Devices and
Controlling Works on Alder Creek in Water District 34

Dear Mr. Young:

I have reviewed the above-referred to Order on behalf of my clients John and Matea McCray. We have no problem with paragraph 1 of your Order, requiring all water users from Alder Creek above the Darlington Ditch to install measuring devices and controlling works. We assume that this applies to the watermaster as well as the others listed. Our concern is with paragraph 2 of the Order.

It is recognized that Alder Creek is a tributary to Big Lost River and that the Darlington Ditch is used to distribute Big Lost River water rights. It therefore appears clear to me that except for the Lambert right which he diverts from Darlington Ditch for Alder Creek water diverted into the Darlington Ditch, when Alder Creek water flows into the Darlington Ditch, it should be used to supply the water under Big Lost River water rights and the diversion into the Darlington Ditch should be reduced in the amount that Alder Creek water is available to supply Big Lost River water rights. It would therefore seem clear that it is the responsibility of Water District 34 to measure the flow of Alder Creek into the Darlington Ditch if it is not allowed to proceed down the Alder Creek channel to the Vanous Ditch which is also used to deliver water under Big Lost River water rights, or when the water is not allowed to follow the natural channel of Alder Creek to Big Lost River. It does not appear to me that a futile call could ever be made which will allow Alder Creek to be delivered through the Darlington Ditch to junior Alder Creek water rights, so long as there are senior Big Lost River water rights receiving water in the Darlington Ditch. For some reason, this natural distribution process is ignored in the "Guidance for Distribution of Alder Creek Water Rights and Flows, Water District 34" recently distributed by Tim Luke of IDWR. On page 4 of that document, where it is indicated that if it is futile to deliver Alder Creek water to the Alder Creek-Vanous Ditch confluence, the Alder Creek water will be delivered to junior priority Alder Creek water rights that are rediverted from the Darlington Ditch. This is absolutely wrong, as Alder Creek is part of the Big Lost River, and it must be first used in the Darlington Ditch, if it is futile to

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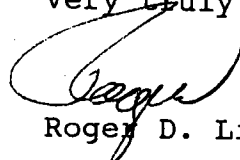
deliver it further down the Alder Creek channel, to fulfill Big Lost River water rights on the basis of priority. I would hope that this oversight on the part of the Department is not a result of the son of the watermaster owning a very junior right to Alder Creek water which must be diverted from the Darlington Ditch to be used.

The above-described "Guidance" is also erroneous in several other respects. It refers to "shareholders" of BLRID. IDWR ought to know that the Big Lost River Irrigation District does not have shareholders. The District is composed of lands that are included within the irrigation district. However, it does not have any natural flow rights to any substantial extent, and is primarily charged with the duty of delivering Big Lost River water rights held by landowners to the lands to which those water rights are appurtenant. At the bottom of page 4 it appears that the Department recognizes my position. In part 2B, it provides that if the watermaster's measurements of the creek between the Darlington and Vanous Ditches show a significant loss, the watermaster must seek approval from the Director of IDWR to turn the flow of Alder Creek into the Darlington Ditch and "account for that water as being delivered from the Big Lost River." We believe that this is a proper statement and the provision at the top of page 4 indicating that water will be delivered to junior priority Alder Creek rights is inconsistent with this provision.

On page 5, the proposed "Guidance" is further confusing. Under paragraph D, it provides that during the deliver of excess water, the watermaster must fill Alder Creek rights in priority as determined for the Big Lost River rights (unsure what this means), and he then is directed to use the excess water from Alder Creek as a credit for Big Lost River water and the Darlington Ditch diversion heading is reduced accordingly. This appears to be an accurate statement so long it is understood that junior Alder Creek rights may not be delivered ahead of senior Big Lost River rights. The reduction of diversions from Big Lost River into the Darlington Ditch will provide more water to fill Big Lost River rights below the Darlington diversion.

I would appreciate your giving my comments some consideration. If my concerns have arisen because of my failure to properly interpret language of the IDWR publication, I would at least suggest that the ambiguities that may exist be corrected to avoid any confusion or misinterpretation in the delivery of Alder Creek water.

Very truly yours,



Roger D. Ling

RDL:jb
pc: John and Matea McCray